

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

CVESTER BRAND, JR., et al.

PLAINTIFFS

V.

CIVIL ACTION NO.1:09CV62-SA-JAD

BOBBY SHELTON, et al.

DEFENDANTS

REPORT AND RECOMMENDATION

The undersigned files this his recommendation, *sua sponte*, based upon his review of the record.

On November 14, 2009 and November 15, 2009, counsel for the plaintiffs moved to withdraw. This motion set out that Cvester Brand had recently passed away and that the remaining plaintiffs had failed to adequately communicate with counsel. When no response was filed to the motion, an order was entered allowing counsel to withdraw on December 14, 2009. This order directed the plaintiffs to either have new counsel appear on their behalf or to advise of their intent to proceed *pro se* within 30 days of the order. Both the court and counsel for the plaintiffs mailed a copy of this order to the plaintiffs. Plaintiffs neither obtained new counsel nor advised the court of their intent to proceed *pro se*.

On December 16, 2009, the defendants filed a motion for summary judgment and a motion for qualified immunity. The plaintiffs have filed no response to these motions. On February 3, 2010, the undersigned issued an order requiring the plaintiffs to show cause within 14 days why the case should not be dismissed for failure to prosecute. The plaintiffs failed to respond to the show cause order. It appears from this review of the record that the plaintiffs have failed to prosecute this action.

The undersigned recommends that the above action be dismissed with prejudice for failure to prosecute.

The parties are referred to 28 U.S.C. 636(b)(1) and Local Rule 72.1(a)(3) for the appropriate procedure in the event any party desires to file objections to these findings and recommendations. Objections are required to be in writing and must be filed within fourteen days of this date. Failure to file written objections to the proposed finding and recommendations contained in this report within ten days from the date of filing will bar an aggrieved party from challenging on appeal both the proposed factual findings and the proposed legal conclusions accepted by the district court *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

Plaintiffs are directed to acknowledge receipt of this report and recommendation by signing the enclosed acknowledgment form and returning it to the court within fourteen days of this date. Plaintiff is warned that failure to comply with the requirements of this paragraph may lead to the dismissal of this lawsuit under F.R.Civ.P. 41(b) for failure to prosecute and for failure to comply with an order of the court.

This the 1st day of March, 2010.

/s/ JERRY A. DAVIS
UNITED STATES MAGISTRATE JUDGE